

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3
4

WESTERN WORLD INSURANCE)
COMPANY,)

Plaintiff,)

vs)

PROFESSIONAL COLLECTION)
CONSULTANTS,)

Defendant.)

**CERTIFIED
TRANSCRIPT**

No. 2:15-cv-02342 MWF
(VBKx)

10
11
12
13
14 DEPOSITION OF PERSON MOST QUALIFIED CLARK GAREN
15 Los Angeles, California
16 Wednesday, February 3, 2016
17 Volume I
18
19
20

21 Reported by:
22 LYNN ZINK, RPR
23 CSR No. 9466
24 JOB No. 2190452
25 PAGES 1 - 60

Page 1

Veritext Legal Solutions
866 299-5127

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3
4

WESTERN WORLD INSURANCE)
COMPANY,)

Plaintiff,)

vs)

No. 2:15-cv-02342 MWF

(VBKx)

PROFESSIONAL COLLECTION)
CONSULTANTS,)

Defendant.)

11
12
13
14
15 Deposition of PERSON MOST QUALIFIED CLARK GAREN,
16 Volume I, taken on behalf of Plaintiff, at 2049 Century
17 Park East, Suite 2450, Los Angeles, California, beginning
18 at 10:08 a.m. and ending at 11:50 a.m. on Wednesday,
19 February 3, 2016, before LYNN ZINK, Certified Shorthand
20 Reporter No. 9466.
21
22
23
24
25

Page 2

Veritext Legal Solutions
866 299-5127

1 APPEARANCES:

2

3 For Plaintiff:

4 SELVIN WRAITH HALMAN LLP

5 BY: DAVID A. EVANS

6 Attorney at Law

7 505 14th Street, Suite 1200

8 Oakland, California 94612

9 (510) 874-1811

10 devans@selvinwraith.com

11

12 For Defendant:

13 LAW OFFICES OF DAVID W. WIECHERT

14 BY: DAVID W. WIECHERT

15 Attorney at Law

16 115 Avenida Miramar

17 San Clemente, California 92672

18 (949) 361-2822

19 dwiechert@aol.com

20

21 LAW OFFICES OF CLARK GAREN

22 6700 South Centinela Avenue, 3rd Floor

23 Culver City, California 90230

24 (310) 391-0800

25 clarkgaren@msn.com

Page 3

Veritext Legal Solutions
866 299-5127

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS	EXAMINATION
CLARK GAREN	
Volume I	
	BY MR. EVANS 6, 54
	BY MR. WIECHERT 49

EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
Exhibit 1	Notice of Taking Deposition of Person Most Qualified and Production of Documents	10
Exhibit 2	Application, Bates Nos. WW 1 to 15	20
Exhibit 3	Search and Seizure Warrant, Bates Nos. WW 89 to 121	24
Exhibit 4	Letter dated 9/25/13, Bates Nos. WW 74 to 79	29

Page 4

Veritext Legal Solutions
866 299-5127

1 INDEX (Continued):

2 EXHIBITS

3 EXHIBIT	DESCRIPTION	PAGES
4 Exhibit 5	Letter dated 10/15/13, Bates Nos.	32
5	WW 80 to 84	
6		
7 Exhibit 6	Letter dated 11/26/13, Bates Nos.	34
8	WW 85 to 88	
9		
10 Exhibit 7	Letter dated 8/7/14, Bates Nos.	36
11	WW 122 to 123	
12		
13 Exhibit 8	Letter dated 1/9/15, Bates Nos.	38
14	WW 124 to 127	
15		
16 Exhibit 9	Letter dated 7/7/14	39
17		
18 Exhibit 10	Letter dated 1/28/15, Bates Nos.	40
19	WW 128 to 135	
20		
21		
22		
23		
24		
25		

Page 5

Veritext Legal Solutions
866 299-5127

1 Los Angeles, California, Wednesday, February 3, 2016

2 10:08 a.m.

3
4 CLARK GAREN,

5 having been first administered an oath, was examined and
6 testified as follows:

7
8 EXAMINATION

9 BY MR. EVANS:

10 Q If you could state your name for the court reporter,
11 please.

12 A Clark Garen, G-a-r-e-n.

13 Q Mr. Garen, we're here on the Western World versus
14 Professional Collection Consultants matter. My name's Dave
15 Evans. I represent Western World Insurance Company. And I
16 understand that you are an attorney, but for the sake of a
17 clean record, let's go through some of the standard
18 admonitions as we get started just so that everything is
19 clear.

20 Have you been deposed in the past?

21 A Yes.

22 Q How many times would you estimate?

23 A Three to five.

24 Q When was the most recent time you were deposed?

25 A It's been so long ago I really don't remember.

Page 6

Veritext Legal Solutions
866 299-5127

1 two issues are similar to the last one, but referring to
2 former PCC employees Beblen Pole and Lisa McCann.
3 Mr. Garen, you and I recently had a --

4 A Why don't I make a statement.

5 Q Okay.

6 A Beblen Pole and Lisa McCann submitted a claim for
7 arbitration with the same attorney who is representing Greg
8 Hudson. Their mediation -- excuse me, not arbitration.
9 The mediation did not resolve it. No action has ever been
10 filed, no governmental complaint has ever been filed, and
11 the statute of limitations for making such a complaint has
12 now expired. So based on the fact that it does not appear
13 there is a claim by either Beblen Pole or Lisa McCann, we
14 are withdrawing the portion of our counterclaim insofar as
15 it relates to Beblen Pole and Lisa McCann.

16 Q Thank you. That's my understanding of our agreement
17 as well. And for that reason we will not be going into
18 these issues for this deposition today.

19 A That is correct.

20 Q Moving down to the issue No. 8, which reads -- which
21 addresses PCC's claim that Western World breached the
22 Western World policy with respect to the Hudson action,
23 Pole claim, and McCann claim. With the caveat that we are
24 dropping the Pole claim and McCann claim from this issue,
25 are you the person most qualified to testify as to this

Page 12

Veritext Legal Solutions
866 299-5127

1 Q I'd like to show you another document. I know that
2 it is in your files because we got it from you. This is --
3 this will be Exhibit 3.

4 (Exhibit 3 was marked for identification
5 by the court reporter and is attached hereto.)

6 THE WITNESS: What do you want me to do with the --

7 MR. WIECHERT: The ones that you've used, hand them
8 to me, and that will be our copies.

9 THE WITNESS: Okay.

10 BY MR. EVANS:

11 Q So I'm providing you with -- you want me to provide
12 this to counsel first so you can label it?

13 MR. WIECHERT: Sure. That would be great.

14 MR. EVANS: Will be Exhibit 3. This is a search and
15 seizure warrant.

16 Q Are you familiar with this document?

17 A Yes.

18 Q When did you first see this document?

19 A I don't remember the date, but it would have been
20 the date that the FBI visited the office of PCC, probably
21 about 2:00 or 3:00 in the afternoon.

22 Q Was this in August, 2013, to the best of your
23 recollection?

24 A I believe it was August 27, 2013, as I'm looking at
25 the inventory of the receipt that's dated August 27, 2013.

Page 24

Veritext Legal Solutions
866 299-5127

1 the service of subpoenas, no communications.

2 MR. WIECHERT: Are we done with this exhibit?

3 MR. EVANS: Yes.

4 MR. WIECHERT: Thank you.

5 BY MR. EVANS:

6 Q I'm providing you with another document. This will
7 be Exhibit 4. It is probably familiar to you because I
8 believe -- well, you produced it to me. It is a September
9 25, 2013 federal grand jury subpoena with a cover letter
10 from the United States Department of Justice.

11 A Uh-huh.

12 (Exhibit 4 was marked for identification
13 by the court reporter and is attached hereto.)

14 BY MR. EVANS:

15 Q Are you familiar with this document?

16 A Yes.

17 Q If we could turn to the page -- it's labeled at the
18 bottom page 78 with Western World's Bates stamp number. At
19 the top of the page it's labeled "Subpoena Attachment."
20 Are you on that page?

21 A Yes.

22 Q The subpoena attachment identifies documents that
23 PCC is to provide as part of this deposition -- part of
24 this grand jury. Would you agree?

25 A Yes.

Page 29

Veritext Legal Solutions
866 299-5127

1 Q Among the items requested, we look down at item 5,
2 it says, "Any and all records, including training manuals,
3 materials, handouts, instructions, guidelines, videos
4 training logs, and/or internal control records related to
5 'Skip Tracing' and or debt collection." And in a
6 parenthetical the attachment states, "This material should
7 include any education provided to employees as it relates
8 to the Fair Debt Collection Act."

9 Do you see that?

10 A Yes.

11 Q Did you -- correct that. Did PCC produce documents
12 pursuant to this particular request?

13 A Absolutely.

14 Q Did PCC provide documents as to all of the items
15 listed on the subpoena attachment, items 1 through 6?

16 A We produced items in response to No. 1. We produced
17 items for No. 2, produced items for No. 3, items for No. 4,
18 items for No. 6.

19 Q Do you know who testified before the grand jury in
20 response to this subpoena?

21 MR. WIECHERT: Assumes facts not in evidence.

22 BY MR. EVANS:

23 Q Did anybody testify before the grand jury pursuant
24 to this subpoena?

25 A No.

Page 30

Veritext Legal Solutions
866 299-5127

1 original back.

2 Q All right. So we're looking at the August 7, 2014
3 letter. You agree this was to Todd Shields; correct?

4 A Yes.

5 Q And remind me, Todd Shields is the president of PCC;
6 correct?

7 A Correct.

8 Q And this is a letter that Western World is
9 responding to the tender of a claim by Gregory Hudson;
10 correct?

11 A Well, the letter speaks for itself.

12 Q It does. If I could just direct your attention to
13 the second page of the letter, the first full paragraph,
14 which starts, "Please be advised that Western World has
15 retained the law office of Thompson, Coe & O'Meara, LLP to
16 respond to the demand for mediation and protect the
17 interests of Professional Collection Consultants in this
18 matter."

19 Is it your recollection that the law firm of
20 Thompson, Coe & O'Meara did, in fact, represent the
21 interests of Professional Collection Consultants at the
22 mediation that Mr. Hudson demanded?

23 A Yes.

24 Q Is Thompson, Coe & O'Meara continuing to represent
25 PCC with respect to the Hudson claim, as of today?

Page 37

1 A As of today they are still our attorneys. I'm not
2 too sure who they're representing, but they are our
3 attorneys of record.

4 Q They are your attorneys of record; correct?

5 A Yes.

6 Q Thank you.

7 THE WITNESS: Can we go off the record here a
8 minute?

9 MR. EVANS: Okay.

10 (Discussion off the record.)

11 BY MR. EVANS:

12 Q Let's move to another document. This will be
13 Exhibit 8. This is a letter dated January 9, 2015 to Todd
14 Shields from Steve Joseph of Western World.

15 (Exhibit 8 was marked for identification
16 by the court reporter and is attached hereto.)

17 BY MR. EVANS:

18 Q Is this letter familiar to you? I believe it's one
19 that's in your file as well.

20 A Yes. I have the original.

21 Q Okay.

22 A Oh, by the way, we never did put this letter in.
23 This is the one that started everything.

24 Q Okay. Why don't we do that. We'll take a moment
25 right now to do that.

Page 38

Veritext Legal Solutions
866 299-5127

1 legal conclusion.

2 THE WITNESS: Violations of the Fair Debt Collection
3 Practices Act are the basis for a civil action. As far as
4 I know, they are not the basis for a criminal action.

5 BY MR. EVANS:

6 Q PCC has actually been sued before under the Fair
7 Debt Collection Practices Act; correct?

8 A Yes.

9 Q This is something that, in your capacity as an
10 officer or director and counsel for PCC, you're aware that
11 this is a major potential liability for PCC as it goes
12 about its business; correct?

13 MR. WIECHERT: Calls for a conclusion and ambiguous
14 as to major liability. I think that was the words that
15 counsel used.

16 THE WITNESS: Well, it's not a major liability
17 because we comply with the act. It is -- there are a
18 number of attorneys who have gone in the business of filing
19 collection torts based on the FDCPA because it is a heads
20 the consumer wins, tails the agency loses act, because if
21 the consumer wins, the debtor gets all his attorney fees
22 and then -- the attorney gets all the attorney fees, the
23 debtor gets \$1,000. If the agency wins, the agency doesn't
24 get anything.

25 So it's basically if you win, you pay your own

Page 46

Veritext Legal Solutions
866 299-5127

1 attorney fees; if you lose, you pay your attorney fees and
2 the debtor's attorney fees. So you can only afford to
3 litigate a case that is clearly no liability. But it is
4 not a major -- it's only a major problem for an agency that
5 as a routine, does things that violate the act.

6 We take pride that we don't do things that violate
7 the act, which is why we have the kind of clients we have,
8 because in today's atmosphere, with the Consumer Finance
9 Protection Bureau, your clients are your biggest policeman
10 because they won't let you do anything.

11 And so, no, it is not a major problem to us. It is
12 a nuisance problem to us, and one of the reasons it is is
13 that we have a deal with our carrier that allows us to
14 defend these cases in-house. And if we have a liability,
15 we pay it right away. We do that very infrequently. If we
16 feel there is no liability, we defend it.

17 So these guys who are in the business of filing
18 these suits learn right away they don't want to sue us
19 because we don't pay like a slot machine. The way the
20 industry works, once you pay A, you get a claim from B, C,
21 and D. They just know, ah, here's a new pigeon. And there
22 are a lot of agencies just -- it's a major problem because
23 they pay these claims right away as a cost of doing
24 business. We don't.

25 And we get sued -- I would say we get sued maybe

Page 47

Veritext Legal Solutions
866 299-5127

1 once, maybe twice a year. It's very, very infrequent that
2 we get sued. And the reason it's so infrequent is because
3 we comply with the law.

4 BY MR. EVANS:

5 Q And the unfortunate thing from your perspective is
6 that doesn't stop somebody from suing you. It's just that
7 from -- your testimony is that you do things the right way
8 so you're generally going to be able to defend those
9 lawsuits.

10 A No, that is not my testimony. My testimony is we do
11 things the right way so we tend not to get sued. And
12 attorneys, because they know that we defend them, they
13 won't file a weak case against us. That's why we don't get
14 sued, because they know we don't pay unless we did
15 something. And they know if we did something, they get
16 paid with a letter.

17 And so, as I say, we get sued maybe once or twice a
18 year, whereas most agencies of our size get three to five
19 claims a month.

20 Q Okay.

21 Okay. That's all I have. Thank you. As far as I'm
22 concerned, we're done.

23 MR. WIECHERT: Okay. Want to take a break, and I'll
24 come back and see if there are any questions.

25 MR. EVANS: Okay. Sounds good to me.

Page 48

Veritext Legal Solutions
866 299-5127